CREATIVE ENGINEERING

INCORPORATED

HOME OF ELECTRONIMATION™

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August 16, 1990

Mr. Ronald F. Saupe
General Counsel
ShowBiz Pizza Time, Inc.
4441 W. Airport Freeway
Irving, Texas 75062

Reply To:
47 W. Jefferson Street
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Dear Ron:

I will thank you for your letter of August 9. I regret that I cannot thank you for its content. I will try to cover in this letter various issues between us.

I note your language that you "are in the process of reidentifying our show to eliminate the Rock-afire characters." This is the first language, if I understand it correctly, that we have received from ShowBiz to this effect. In Dick Frank's last conversation with Aaron, his words were to the effect that your effort on this was a failure and that you did not intend to proceed with such an effort at this time. He told Aaron further that he would keep him informed. Your words now, however, appear to confirm rumors that till now we received only from secondary sources and from photographs that recently have reached us: to the effect, namely, that you are proceeding to change-out the Licensed Products, retaining the underlying mechanics - unaltered in any way - and related electronic components, and thus retaining all of the identical movements of our characters, and their shapes and forms, altering only the superficial exteriors of the characters by changing the masks and costumes, in all ShowBiz and franchisee restaurants. I have been told, although I have not seen them, that you have two such change-outs in operation at this time.

I do not question the right of ShowBiz to remove the Rock-afire Explosion® altogether from its stages (subject to the limitation of what you do with the characters so removed). I do, however, question your right to disparage and caricature our characters by turning them into whatzises with clearly the identical movements and forms.

No, Ron, that is not acceptable. Don't denigrate and parody the Rock-afire Characters with a mere change in superficial coverings and pretend you think you have something totally different.

Let me turn now to other matters. I will call first to your attention the following language, which is the first sentence of Section 4(d) of the S&LA:

> All rights not specifically granted herein to one or both of ShowBiz and BHC are reserved by Creative and Fechter....

The Rock-afire Explosion® is our intellectual property, not yours. There can be no doubt to our right to manufacture it afresh and sell such non-retained shows to whomever we please. There is nothing in the S&LA to prohibit it, and I refer you specifically to the language quoted above from 4(d). Rest assured that if I tell you a show was wholly manufactured in 1990, I am prepared to prove it. It will be no mere "allegation."

I suggest that you and Dick Frank stop looking through your rose-colored glasses from the point of view of ShowBiz, wishing that what you wished was is. Neither you nor Dick participated in the composition of the Settlement and License Agreement. ShowBiz did, however, pay high-priced counsel to prepare it over a period of four or five months, and I have assumed that it means just what it says. Tom Corcoran, who shortly thereafter became chairman of ShowBiz (or was it president?) had some input to the language, and so did I. The simple truth is ShowBiz thought Creative was all washed up at the time of the S&LA because of the heavy burden it had left us under, and that we would never again be able to manufacture anything. Indeed, rumors were rife among its franchisees (from what source?) that we were in bankruptcy. Sorry to have disappointed you. Your interpretation of the S&LA's "intent" is hogwash; more accurately, it is stated in the following "whereas" clause:

> WHEREAS, the parties hereto desire to settle and forever discharge all rights, claims, and obligations among them upon the terms and conditions set forth is this Agreement;

and that includes that you have no rights to the Licensed Products (as well as the Rock-afire Characters) except such as are specifically stated in the Settlement and License Agreement. "Coexistence"? What that means to ShowBiz is that Creative should lie peacefully in its tomb.

Approximately six years, I believe, have passed since we last received any deposits for any purpose from ShowBiz under the Manufacturing, Sales, and License Agreement. (And indeed I noted a few years ago, in one of your annual statements, that the payments made to Creative in the last year of our relationship under the Manufacturing, Sales and License Agreement were grossly overstated.) But I suggest that you not attempt to impose upon us limitations as to which of our copyrighted characters we may now manufacture or to whom we may sell such Electronimation® Products manufactured now.

So much for non-RETAINED SHOWS.

I turn now to the issue of "Lease" vs. "Sale." The language of Section 3 means what it says, no more, no less. I never thought it intended more, and I certainly don't now. By what legal authority or precedent do you think "Sale"

means "Lease"? I assure you that if I say we have "leased" a show, I will be talking about a "true lease." Do you suggest that your counsel was not able to compose language sufficiently broad to include a lease?

I will inform you now that Rock-afire Explosion® shows have already been contracted for, going within four miles of a ShowBiz restaurant, that fall within one or more of the categories of my letter of August 2.

I note that you say "we have no intention of disposing of the character likenesses in a manner that would in any way violate the terms of the Settlement and License Agreement." Thank you. You have done this in the past. In fact, we have bought back complete shows from third parties. Thank you for not doing so in the future. As we have previously discussed, your compliance with this provision of the S&LA is a vital matter to Creative.

Creative was never unwilling to work out a fair arrangement with Showbiz on the continuing use of the Rock-afire Explosion® - intact - and even now is not unwilling, within the limits of contracts now with third parties, but has been confronted by hostility, I think, from certain sources in ShowBiz, and, I have felt, the arrogance of a much larger company. In the Settlement and License Agreement Creative gave up perhaps tens of millions of dollars of benefits under the Manufacturing Sales and License Agreement; do not now attempt to deprive us of what little benefit of the bargain we derived under the S&LA. ShowBiz has made such efforts in the past to our considerable detriment. If, however, ShowBiz has now made the irrevocable decision to wash its hands finally and fully of the Rock-afire Characters, as I believe your letter of August 9 implies, I must ask you to do so properly. The best way to do that would be to remove the Rock-afire Characters altogether from your stages, completely, from Fatz's tapping toe to Duke's antennae, their entire bodies, together with their accompanying props, and replace them with Chuckee or other animation and software of your design manufactured and produced to your order by a third party. But in any event, if you do retain any of the underlying mechanisms of the Rock-afire Characters, do not merely change their superficial exterior coverings: of course, change out their fur, garments, and masks, but that alone is not enough; change the shapes and forms of the characters and their movements - it will not do, for example, to change Fatz to a purple whatzis, of precisely the same shape, of precisely the same gestures and movements, and playing, indeed, Fatz's unique organ with only the Rock-afire name removed; remove all props that are clearly part of the Rock-afire show; and do not use any software which we provided for the Rock-afire show either before or after the S&LA, or that was provided by others for the Rock-afire show with approval by us. Do not simply parody and debase the Rock-afire Explosion®.

Sincerely,

Melvin A. Fechter
General Counsel

MAF/rl

CREATIVE ENGINEERING INC.
RESPONSE TO CONCEPT UNIFICATION

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